(Testimony of Oscar Nystrom.)

Q. I will show you U. S. Exhibit No. 51 and ask you if it was similar to that label?

A. Yes, it was.

Q. Do you recall making a delivery to the steamship Phillipa? A. Yes, I do. [2290]

Q. When was that delivery?

A. In the first part of May.

Q. What year? A. 1944.

Q. From where was that delivery made?

A. Pier 30.

Q. From where?

A. From the Nye & Nissen plant.

Q. In San Francisco? A. That's right.

Q. To where?

A. To the Matson Navigation dock, pier 30, at the corral.

Q. Do you recall what was included in that load? A. I do not.

Q. Do you know whether you delivered eggs?

A. I do.

Q. Who indicated the lot of eggs that were to be included in the load?

A. Mr. Berman and Mr. Goddard.

Q. Do you recall whether or not the load included any cheese? A. I do not.

Q. Butter? A. I don't remember.

Q. At the time the load was being prepared did you receive certain delivery documents from any of the defendants? A. I did.

Q. From whom? A. Mr. Berman.

Q. I will show you U. S. Exhibit 83 and ask

(Testimony of Oscar Nystrom.)

you to look at that, please, and also will you look at 84, please. Are both of those invoices which you received from Mr. Goddard, Mr. Berman at that time? A. That's right.

The Reporter: Did you say "Mr. Goddard and Mr. Berman"?

Mr. Hippeli: Strike that.

Q. Are both U. S. Exhibits 83 and 84 invoices which you received from Mr. Berman at that time?

A. That's right. [2291]

Mr. Faulkner: I thought he said from Mr. Berman and Mr. Goddard, that he got them from both.

Mr. Hippeli: Q. From whom did you receive these documents? A. Mr. Berman.

Q. Were documents similar to U. S. Exhibit 83 taken with the load to the Phillipa at pier 30?

A. That's right.

Q. Were certain of these documents signed?

A. Right.

Q. What was done with them then?

A. I returned them to the Nye & Nissen plant at 17th and Missouri and Mr. Berman told me to give them to Mr. Goddard.

Q. What did you do?

A. I gave them to Mr. Goddard.

Q. Directing your attention to U. S. Exhibit 84, I will ask you if that refreshes your recollection as to whether or not any cheese was included in that load? A. It does.

Q. Was any Cheddar cheese included in the load? A. No, there was not.

(Testimony of Oscar Nystrom.)

Q. From whom did you receive the cheese included in the load? A. From Mr. Berman.

Q. Was any butter included in the load?

A. Yes, there was.

Q. From whom did you receive that?

A. Mr. Goddard.

Q. I show you U. S. Exhibit 77 and ask you if you recognize that document? A. Yes, I do.

Q. What is it?

A. It is a customer's invoice which when I made delivery down to the Matson Navigation dock that I received from Mr. Goddard. [2292]

Q. Do you recognize to what ship that customer's invoice is directed? A. Yes.

Mr. Faulkner: May I see the instrument that he is referring to? This relates to the Phillipa?

Mr. Hippeli: Yes.

Mr. Faulkner: All right.

Mr. Hippeli: Q. Can you tell us to what ship that invoice is directed? A. SS Phillipa.

Q. Did you deliver that invoice to the Phillipa?

A. I did.

Q. Do you recognize the handwriting on that invoice? A. Yes.

Q. Whose is it?

A. That is Mr. Goddard's.

Q. I notice another signature on there, I believe it is "Wolff".

A. That's right. That was the receiving clerk at the Matson Navigation corral dock.

Q. Did you give that document to him to sign?

(Testimony of Oscar Nystrom.)

A. That is right.

Q. Did he sign it? A. He did.

Q. What did you do with it?

A. I returned it to the Nye & Nissen plant at 17th and Missouri.

Q. Did you ever make a delivery to the steamship Edmund Ross? A. Yes, I did.

Q. When? A. First part of May.

Q. What year? A. 1944.

Q. From where?

A. Nye & Nissen plant at 17th and Missouri.

Q. Do you recall what was contained in that load?

A. There were eggs contained in that load

Q. Do you know if there was any cheese?

A. There was some cheese.

Q. Do you know whether it was Cheddar cheese or not? A. I do not.

Q. Do you know if there was any butter?

A. Yes, sir.

Q. Do you know to where you made the delivery? A. I don't remember.

Q. Who was present at the time you prepared that load? A. Mr. Berman.

Q. Did you receive the documents from Mr. Berman? A. I did.

Q. I will show you U. S. Exhibit 161 and ask you if that is a Nye & Nissen invoice received from Mr. Berman at the time you prepared the load for delivery to the Edmund Ross?

A. That's right.

(Testimony of Oscar Nystrom.)

Q. Refreshing your recollection from that document, can you tell us the exact date that that delivery was made.

A. I can't tell state the exact date, but it was approximately the first week in May.

Q. Was it approximately the date appearing on the invoice, the date of the invoice?

A. That's right.

Q. Referring to the document, can you tell us to where the delivery was made? A. Yes.

Q. Where? A. Pier 29. [2294]

Q. Where is that?

A. Down at the San Francisco waterfront.

Q. Referring to the document, can you tell us whether you delivered any cheddar cheese?

A. Yes.

Q. From whom did you receive that cheese?

A. Mr. Goddard.

Q. Did you deliver any butter?

A. I did.

Q. From whom did you receive that?

A. Mr. Goddard.

Q. Did you take those documents and your load to pier 29? A. I did.

Q. Were certain documents signed there?

A. They were.

Q. To whom did you return them?

A. To Mr. Berman at Nye & Nissen.

Q. Do you recall making a delivery to the steamship William Coulter? A. Yes, I do.

Q. When?

(Testimony of Oscar Nystrom.)

A. I think this states the date, between the 6th and the 8th.

Q. Of what month? A. Of May, 1944.

Q. From where did you make that delivery?

A. From Nye & Nissen plant, 17th and Missouri.

Q. To where did you make the delivery?

A. I don't remember the exact pier.

Q. Do you recall what was in the lot delivered?

A. I remember there was some eggs and some butter.

Q. From whom did you receive the eggs?

A. Mr. Berman.

Q. From whom did you receive the butter?

A. Mr. Goddard. [295]

Q. Do you recall whether there was any cheese?

A. No, I do not.

Q. At the time the lot was being prepared who was present? A. Mr. Berman.

Q. Did you receive any documents from Mr. Berman? A. I did.

Q. I will show you U. S. Exhibit 169 and ask if that is Nye & Nissen invoice which you received from Mr. Berman at that time calling for the delivery of certain products to the steamship William Coulter? A. That's right.

Q. Looking at that document, can you tell us the date of the delivery? A. Yes, I can.

Q. When was it?

A. The 8th of May, 1944.

Q. To what pier was the delivery made?

A. 44.

(Testimony of Oscar Nystrom.)

Q. Where? A. In San Francisco.

Q. Did the lot include any cheese?

A. Yes, it did.

Q. From whom did you receive the cheese?

A. Mr. Berman.

Q. Was this load and the documents accompanying that, Exhibit 169, delivered to pier 44?

A. They were.

Q. Was any documents signed down there?

A. They were.

Q. What was done with them?

A. They were brought back to 17th and Missouri Streets to the Nye & Nissen plant and handed over to Mr. Berman.

Q. Do you recall making a delivery to the steamship Francis Parker? A. Yes.

Q. When? A. Second week of May.

Q. What year? A. 1944. [2296]

Q. Do you recall the exact date of that delivery? A. Yes.

Q. From where was that delivery made?

A. I don't remember.

Q. From where?

A. From the Nye & Nissen plant.

Q. In San Francisco? A. That's right.

Q. To where was that delivery made?

A. I don't recall.

Q. What did the lot include?

A. It included eggs.

Q. Do you know whether there was any butter?

A. There was some butter and cheese included.

(Testimony of Oscar Nystrom.)

Q. Do you know what kind of cheese was included? A. I don't remember.

Q. At the time the lot was being prepared who was present? A. Mr. Berman.

Q. Mr. Goddard? A. I don't remember.

Q. Do you know if the lot included butter?

A. It included some butter, yes.

Q. Was Mr. Goddard present?

Mr. Faulkner: He just answered that.

The Witness: Any load that included butter I always had to see Mr. Goddard.

Mr. Faulkner: May I have that answer read.

The Court: Read the answer.

(Answer read by the reporter.)

Mr. Hippeli: Q. At the time the load was being prepared did you receive certain documents?

A. I did.

Q. From whom? A. From Mr. Berman.

Q. I will show you U. S. Exhibit No. 102, which is a Nye & Nissen invoice calling for the delivery of butter, cheese and eggs to Francis W. Parker, and ask you if that is a document which you received from Mr. Berman?

A. That is right.

Q. I will show you U. S. Exhibit 103, did you also receive that document from him at that time?

A. That's right.

Q. And Exhibit 104, did you receive that document from him at that time? A. I did.

Q. Referring to Exhibits 102, 103 and 104, can you tell us the exact date of the delivery?

(Testimony of Oscar Nystrom.)

A. I can.

Q. When was it? A. May 9, 1944.

Q. To where was the delivery made?

A. Pier 41.

Q. Where?

A. San Francisco waterfront.

Q. Did this delivery include any cheese?

A. Yes, it did.

Q. From whom did you receive the cheese?

A. I received that from Mr. Berman.

Q. What is Exhibit 104—what is document No. 104?

A. I wish you would ask me that question again.

Q. What is that document you are looking at now?

A. It is a Nye and Nissen document.

Q. Is that different from the usual type white invoice? A. Yes.

Q. It is a shipper's or customer's invoice, is it not? A. Yes sir. [2298]

Q. Do you recognize the handwriting on it?

A. Yes, I do.

Q. Whose handwriting is it?

A. That is Mr. Berman's. [2298-a]

Q. Do you recognize that signature in pencil on that document?

A. No, I don't recall that. That is signed by the steward of the boat.

Q. Did he sign that in your presence?

A. He did.

Q. What did you do with the document then?

(Testimony of Oscar Nystrom.)

A. I brought them back to Mr. Berman at the Nye & Nissen plant.

Q. Do you recall making a delivery to the steamship Mission San Diego? A. Yes, I do.

Q. When?

A. In the second week of May.

Q. What year? A. 1914.

Q. From where did you make that?

A. Nye & Nissen plant at Seventeenth and Missouria Streets.

Q. To where did you make that delivery?

A. The Amship Pier, Oakland.

Q. To where?

A. Amship Pier, Oakland.

Q. What was contained in that delivery?

A. Some butter, eggs and cheese.

Q. Do you recall the kind of cheese?

A. No, I do not.

Q. Who was present at the time the delivery was prepared? A. Mr. Berman.

Q. Anyone else? A. I don't remember.

Q. Do you recall whether it included butter?

A. Yes, it included butter, cheese and eggs.

Q. Was anyone else present besides Mr. Berman? A. I don't recollect. [2299]

Q. From whom did you receive the eggs?

A. Mr. Berman.

Q. From whom did you receive the butter?

A. Mr. Goddard.

Q. Mr. Goddard was also present at that time, was he? A. Yes.

(Testimony of Oscar Nystrom.)

Q. At the time the load was being prepared did Mr. Berman give you any documents?

A. He did.

Q. I show you U. S. Exhibit No. 153, which is a Nye & Nissen invoice calling for the delivery of products to the steamship Mission San Diego, and ask you to look at that, please. From that document can you tell us the date of the delivery?

A. Yes, I can.

Q. When is it?

A. The 10th day of May, 1944.

Q. To where did you make the delivery?

A. Amship Pier, Oakland.

Q. What kind of cheese was included in the delivery?

A. Romano Dolce and the Cheddar loaf.

Q. From whom did you receive that cheese?

A. I received the Romano Dolce and the Cheddar loaf from Mr. Goddard.

Mr. Faulkner: That is not accurate, Mr. Hippeli. He received three kinds of cheese, didn't he?

Mr. Hippeli: Q. From whom did you receive the — it also includes some processed American cheese?

A. I received that from Mr. Berman.

Q. Did you take documents similar to invoice 153 with your load to the Mission San Diego?

A. That is right. [2300]

Q. Were certain of the documents signed there?

A. They were.

(Testimony of Oscar Nystrom.)

Q. What was done with those that were signed and left in your presence?

A. They were returned to Mr. Berman.

Q. Do you recall whether the cases of eggs bore any label? A. No, they did not.

Q. Did you hear that question?

A. Yes, I heard that question. Some of the cases had labels and some did not.

Mr. Faulkner: We object to the witness volunteering, your Honor. He said he heard the question.

The Court: Read the last two questions and answers.

(Record read.)

The Court: Let both questions and answers stand. Proceed.

Mr. Hippeli: Q. I will show you U. S. Exhibit No. 49 and U. S. Exhibit No. 50 and ask you if that is the type of label that appeared on some of the cases. A. That is right.

Q. Do you recall making a delivery to the steamship Cape Cumberland? A. I do.

Q. When?

A. It was a short time before I left there.

Q. When did you leave?

A. I left in the middle of May, 1944.

Q. And your delivery to the Cumberland would be a little before the middle of May, 1944?

A. That is right, three or four days before.

Q. From where did you make that delivery?

A. From the Nye and Nissen plant. [2301]

(Testimony of Oscar Nystrom.)

Q. Do you recall to where the delivery was made?

A. I don't remember the exact pier.

Q. Do you recall what was included in that delivery? A. Yes, I do.

Q. What was it?

A. Some eggs and some cheese.

Q. Was there any butter?

A. Some butter.

Q. At the time the load was being prepared who was present?

A. Mr. Berman and another driver by the name of Paul Robeson and myself.

Q. Were you present? A. I was.

Q. In what part of the plant were those three individuals?

A. We were all at the entrance of my truck.

Q. What was near your truck?

A. The butter, eggs, and cheese.

Q. Did you observe Mr. Berman and Mr. Robeson do anything?

A. Yes, I did.

Q. What did they do?

A. They scraped the weights off the wooden boxes of cheese.

Q. Do you recall what kind of cheese it was?

A. It was Cheddar loaf.

Q. From whom had you received that cheese?

A. I received that cheese from Mr. Berman.

Q. From whom had you received the eggs?

A. I received them also from Mr. Berman.

(Testimony of Oscar Nystrom.)

Q. And the butter?

A. From Mr. Goddard.

Q. At the time of preparing this load did you receive any [2302] documents?

A. Yes, I did.

Q. From whom?

A. From Mr. Berman.

Q. I show you U. S. Exhibit No. 140, and ask you if that is a copy of the Nye & Nissen invoice calling for the delivery of butter, cheese and eggs to the Cape Cumberland.

A. Yes, that is right.

Q. What was the date of that delivery?

A. The 10th of May, 1944.

Q. To where was the delivery made?

A. Berth 3, Outer Harbor.

Q. Where is the Outer Harbor?

A. In Oakland.

Q. Did you deliver that particular load on those documents? A. I did.

Q. By those documents I mean documents similar to the Exhibit 140?

A. Yes, I took four or five other documents besides this one, here.

Mr. Faulkner: May I have that answer, Judge?

The Court: Read it, Mr. Reporter.

(Answer read.)

The Court: It is now twelve o'clock. The jurors may be excused.

(A recess was taken until 2:00 o'clock p.m.) [2303]

Afternoon Session, March 6, 1946, 2:00 p.m.

OSCAR NYSTROM,

recalled;

Direct Examination (resumed)

The Court: Waive the roll call, stipulating and agreeing the jurors are present. You may proceed.

Mr. Hippeli: Q. I will show you Exhibit 143, which is a handwritten Nye & Nissen invoice for the delivery of certain products to the steamship Cape Cumberland. Will you look at that, please? Is that a document which Mr. Berman gave you?

A. That's right.

Q. One of the documents at the time you made your delivery to the Cape Cumberland?

A. That's right.

Q. Do you recognize in whose handwriting that is? A. No, I don't.

Q. No. 143 is written. A. I don't.

Q. You don't recognize that writing?

A. No.

Q. Were certain Nye & Nissen invoices signed at the pier at the time of the delivery to the Cape Cumberland? A. They were.

Q. Were certain of these documents returned to Nye & Nissen? A. They were.

Q. To whom did you give them?

A. To Mr. Berman.

Q. Do you recall making a delivery to the steamship Heber M. Creel? A. I do.

Q. When?

(Testimony of Oscar Nystrom.)

A. In the second week of May, 1944. [2304]

Q. From where did you make this delivery?

A. From the Nye & Nissen plant, Seventeenth and Missouri Streets.

Q. To where did you make this discovery?

A. I made the delivery to Pier 18, San Francisco.

Q. What did the load consist of, do you recall?

A. I do.

Q. What was it?

A. It consisted of five cases of American processed cheese, two cases of Cheddar loaf cheese, one case of Romano Dolce cheese.

Q. Did it consist of any butter?

A. Yes.

Q. Did it include any eggs?

A. Yes, it included eggs.

Q. Do you recall from whom you received the butter? A. I do.

Q. Whom? A. Mr. Goddard.

Q. From whom did you receive the eggs?

A. I received them from Mr. Berman.

Q. From whom did you receive the cheese?

A. From Mr. Berman.

Q. Was all of the cheese received from Mr. Berman? A. They were.

Q. At the time of the preparation of this delivery did you receive any documents from Mr. Berman? A. I did.

Q. I show you U. S. Exhibit 164, which is another Nye & Nissen invoice, calling for delivery of

(Testimony of Oscar Nystrom.)

butter, cheese and eggs to the Heber M. Creel, and ask if you received that invoice from Mr. Berman at that time. A. That's right.

Q. Directing your attention to that invoice, can you tell us the exact time, or about the exact time which you made that delivery?

A. I could. That is on May 12th, 1944. [2305]

Q. To what pier? A. 18.

Q. Does that appear on the invoice?

A. It appears 16 here.

Q. Which is it, 16 or 18? A. 16.

Q. Is that in San Francisco?

A. That's right.

Q. Directing your attention to the plant at Nye & Nissen, do you recall an occasion when you were loading your truck? A. I do.

Q. Was any cheese present near your truck?

A. No, there was not.

Q. Where was the cheese with respect to your truck?

A. In the icebox.

Q. Was anyone else present at that time?

A. Mr. Berman.

Q. Did you have any conversation with Mr. Berman? A. I did.

Q. What was that conversation?

A. That conversation consisted of——

Mr. Faulkner: May I have the time and place and persons present?

Mr. Hippeli: May 12th. It was near the icebox containing cheese at Nye & Nissen's plant, Mr. Berman and Mr. Nystrom being present.

(Testimony of Oscar Nystrom.)

Mr. Faulkner: Thank you.

Mr. Hippeli: Q. Was anyone else present at that time?

A. No, just me and Mr. Berman.

Q. Will you tell us what your conversation was?

A. Mr. Berman told—he had the order here to deliver to the Heber Creel, [2306] which he told me to go to this here, with him, to the icebox. So I went to the icebox. He unpadlocked the icebox, and we entered the icebox. He pointed out what cheese to take, and so forth. So I took the cheese from the icebox which he directed me to take, and placed that over by the entrance to my truck. So I was looking at the——

Mr. Faulkner: This is not a part of the conversation.

Mr. Hippeli: Well, what was done after you placed the cheese near your truck?

A. I proceeded to check off on my invoice what I had taken.

Q. What did you do then?

A. As I checked off on my invoice I noticed that the order called for six cases of American processed cheese.

Q. Were six cases of American processed cheese there? A. No, there was not.

Q. What did you do?

A. I drew his attention to that.

Q. Whose attention? A. Mr. Berman.

Q. What did he say and what did you say about that?

(Testimony of Oscar Nystrom.)

A. I said to him, "Henry, this here order calls for six cases of American processed cheese." I said, "I have only five here." He said to me, he said, "We will substitute a case of Cheddar loaf cheese, that will give you the right amount of packages." So I had two cases of Cheddar loaf cheese there and five cases of American processed, and the order only called for one case of Cheddar loaf cheese. [2307]

Q. How many of American processed?

A. I had only five.

Q. What did the invoice call for?

A. Called for six.

Q. Did you observe any other cheese at that time you were loading it?

A. There was also a case of Romano Dolce cheese in that order, and I noticed on my invoice it called for 65 pounds, and the case was clearly stamped in purple ink, "Net weight 56 lb."

Q. That was the case of Romano Dolce cheese?

A. Yes. So I drew that also to his attention. I asked him, I said—being prior to that I seen him and Mr. Robinson scrape the weights off the boxes. I drew his attention to that. I said, "Do you wish to scrape the weight off this box?"

Q. Who were you talking to now?

A. Mr. Berman all the time. He said to me, "No," he said, "I am going to let it go this time," he said, "I want to see what happens."

Mr. Faulkner: May we have that answer read? We couldn't hear it.

(Testimony of Oscar Nystrom.)

(The answer was read by the reporter.)

Mr. Hippeli: Q: Was that cheese loaded onto your truck? A. It was.

Q. Then the cheese to which you have just testified was loaded on your truck? A. Yes.

Q. That is, the Romano Dolce and the American processed?

A. Yes, and the Cheddar loaf.

Q. That was loaded on your truck?

A. Yes. [2308]

Q. Together with the butter and eggs?

A. That's right.

Q. Did you take that loaf together with the documents which Mr. Berman had given you, to the Heber Creel? A. Yes.

Q. Were certain of those documents signed down at the dock? A. They were.

Q. What did you do with the documents that remained in your possession?

A. I took the documents that remained in my possession back to Nye & Nissen's plant at Seventeenth and Missouri and turned them over to Mr. Berman.

Mr. Hippeli: You may cross-examine.

Mr. Faulkner: At this time, if the Court please, I move to strike the testimony of the witness Nystrom in respect to two transactions, one occuring in relation to a claimed delivery of merchandise on or about the 19th of April, which is unidentified in this record, in respect to whom the merchandise went, and who the purchaser was, and the other

(Testimony of Oscar Nystrom.)

transaction was a transaction that followed that, I think the following day, and to identify it in this record it related to a transaction where certain cheese was sent on a truck, and I think 48 cases and the Army inspectors came down and inspected them and stamped them. The basis of the motion is, the evidence is incompetent, irrelevant, and immaterial, and not within the issues of the case, and no foundation has been laid, either in the testimony or the statements [2309] of counsel that the sales were in fact to any Government agency. I indicated further views to your Honor at a prior time, and I incorporate that argument in behalf of this motion.

(After argument.)

Mr. Faulkner: I will submit the objection.

The Court: The motion will be denied; note an exception.

Mr. Faulkner: Exception.

Cross-Examination

Mr. Faulkner: Q. Mr. Nystrom, in the month of April, 1944——

The Witness: Your Honor, is he talking to me? Will you kindly ask him to state himself more clearly to me so I can hear?

The Court: He can't hear you, Counsel. His hearing is impaired.

Mr. Faukner: Q. In the month of April, 1944, you were employed in the firm of Nye & Nissen, is that correct? A. That's correct.

(Testimony of Oscar Nystrom.)

Q. You were a driver?

A. That's right.

Q. On certain occasions during that month and the following month the truck that you drove was filled with butter, eggs, and cheese from time to time; is that correct?

A. Will you state that again?

Q. During the months of April and May of 1944 the truck that you [2310] drove was filled with butter, eggs, and cheese, from time to time; is that right? A. That's right.

Q. Let me ask you this, Mr. Nystrom: You testified to a conversation that you heard between Mr. Goddard and Mr. Berman, in which you did not participate; was Mr. Berman shouting at Mr. Goddard, and was Mr. Goddard shouting at Mr. Berman at that time?

A. I was standing within one to three feet from them, waiting for my instructions from them.

Q. You mean when they gave your instructions you were within one to three feet of them?

A. Yes, I was within stricking distance of them.

Q. How large a plant is the plant of Nye & Nissen at Seventeenth and Missouri Streets?

A. I would say approximately it is, it would run about 150 by 200.

Q. You testified to a conversation between Mr. Goddard and Mr. Berman; do you recall that?

A. That's right.

Q. Were they shouting at each other?

A. No, they were not shouting at each other.

(Testimony of Oscar Nystrom.)

Q. In the months of April and May, 1944, you delivered certain merchandise to the waterfront.

A. I did.

Q. And you have identified certain ships that you delivered merchandise to? A. I have.

Q. Do you remember the names of the ships?

A. I remember them.

Q. What ships did you deliver merchandise to in the months of April and May, up to the time you left in 1944?

A. I have [2311] a written statement signed by myself to that effect.

Q. I am asking you to tell me the names of the various ships apart from any statement or apart from anything that anyone told you in this courtroom or outside of it; give me the names of ships that you took merchandise to in April and May, 1944.

A. Josiah Royce, Heber Creel, Mission San Diego, Czechoslovakian Victory, and the Cape Charles, Cape Cumberland, and William G. Coulter, and the Day Star. I guess there would be a few more.

Q. Those are the ones to which your attention has been directed in this court, aren't they? You have heard evidence relating to those ships mentioned? A. I have, yes.

Q. Tell me the names of some of the other ships that you have not heard mentioned to you on the witness stand that you delivered merchandise to in 1944, in April and May?

(Testimony of Oscar Nystrom.)

A. I did mention one or two.

Q. Which ones were they?

A. One was the Day Star, and the other the Cushman.

Q. What? A. The Cushman.

Q. Are those the only ships that you delivered merchandise to in the months of April and May, 1944, up to the time you left, other than those you have referred to in your direct examination?

A. I can't answer that one.

Q. How many times a day did you go down to the waterfront to deliver merchandise?

A. Well, we would strike an average [2312] of at least twice a day.

Q. In that period there between April 1st and the 12th of May?

A. Correction on that.

Q. What?

A. Correction there, sir. At the time we have been referring to in the case we are discussing, this here period starts from the last week in April to the first two weeks in May.

Q. I am not talking about that period, Mr. Nystrom. A. Excuse me, sir.

Q. I am talking about April 1st.

A. All right, April 1st; go ahead.

Q. What ships did you deliver merchandise to between April 1st and April 24th?

A. We will say the 19th.

Q. What? A. We will say the 19th.

Q. No. I will say the 24th.

(Testimony of Oscar Nystrom.)

A. All right, 24th. I don't remember.

Q. You don't remember? A. No.

Q. In the occasions and from April 24th until the 13th of May when you made deliveries to these ships in which invoices were shown to you on your direct examination, how many of those deliveries were made in the morning?

A. I can't name that offhand.

Q. Were any of them made in the morning?

A. Yes, they were.

Q. Were the bulk of them made in the morning?

A. I wouldn't say the bulk of them were made in the morning. [2313]

Q. How many trucks were Nye & Nissen loading in the period between April 24th and May 13th for deliveries to the waterfront?

A. That I can't answer.

Q. How many trucks did they have?

A. They had two city sales trucks, a semi-truck, and also another truck for just special deliveries.

Q. They had three trucks altogether for deliveries?

A. Well, counting the city sales trucks they would have five.

Q. They would have five?

A. Five trucks.

Q. Is it not a fact—how many of those trucks would be loading in the morning for deliveries to the waterfront? A. In the morning?

Q. Yes.

A. In the morning it would be my truck, as a rule.

(Testimony of Oscar Nystrom.)

Q. How many more?

A. I never had occasion to notice that.

Q. Isn't it a fact that every morning during the period I have referred to that the normal course of business in the plant of Nye & Nissen was that they would start in loading at least three trucks for deliveries to the waterfront every morning from the 24th of April to the day you left?

A. I could not verify that.

Q. Isn't it a fact the method of operation was that Mr. Berman, in respect to eggs, would indicate to you certain quantities of eggs to put in your truck during that period of time?

A. That's right.

Q. Now, then, those eggs were somewhere in the plant of Nye [2314] & Nissen, weren't they?

A. They were there where he directed me which to take.

Q. They were in the plant, were they not?

A. Yes.

Q. They were in the premises of Nye & Nissen?

A. That's right.

Q. Isn't that right? A. That's right.

Q. Now, Mr. Nystrom how many cases of eggs would there be on a normal morning between the 19th of April and the 13th of May on the floor of the plant of Nye & Nissen, at Seventeenth and Missouri?

A. Don't you think that it rather a foolish question? After all, I am not going over to count those cases of eggs that are in a plant that is doing

(Testimony of Oscar Nystrom.)

a big business. I would say there would be anywhere from a dozen to two dozen trays of eggs all over the plant in the inside there near the loading platform.

The Court: Reframe your question.

Mr. Faulkner: Q. Did you understand my question, Mr. Nystrom?

A. You asked me how many cases of eggs were in the plant.

Q. On a normal morning.

A. On a normal morning.

Q. Yes.

A. There always was a good lot of eggs on hand.

Q. You were there every morning?

A. I was there every morning, yes.

Q. You were working in the plant?

A. I wasn't working in the plant. I was driving. [2315]

Q. Well, you were working in the plant when you went to get eggs?

A. I never went to get eggs unless I was in the company of Mr. Goddard or Mr. Berman.

Q. You didn't go outside and get them, did you?

A. No, I did not.

Q. You got them in the plant? A. Yes.

Q. Everything in the plant was there for you to see, wasn't it?

A. They were there. They weren't there for me to see unless I was supposed to go and get them.

Q. Was there normally at least a thousand cases

(Testimony of Oscar Nystrom.)

of eggs on the floor of Nye & Nissen during that period of time?

A. I never did take that into consideration.

Q. I would ask you to consider it now. Was there normally at least a thousand cases of eggs on the floor of Nye & Nissen's plant during the period of time that you were taking cases of eggs and putting them in your truck in April and May, 1944?

A. Offhand I would say there would be close to a thousand in the plant.

Q. There would be nearer fifteen hundred, wouldn't there?

A. I wouldn't say exactly. I am not an estimator.

Q. Pardon me? You are not what?

A. I say I am not an estimator.

Q. You are not an estimator?

A. I am not an estimator of the number of cases.

Q. In the morning some of those cases were delivered onto the [2316] truck, packed onto the truck by yourself in the morning?

A. By me and Mr. Berman or Mr. Goddard.

Q. Did they put them in the truck for you?

A. No. They seen I got over to the truck what I was supposed to take.

Q. You put the cases of eggs in the truck, did you not?

A. Yes, the eggs that they had me take.

Q. Is that right. A. That's right.

Q. At that time how many cases of the thou-

(Testimony of Oscar Nystrom.)

sand or fifteen hundred on the floor bore a green label?

A. I would say at least half of them.

Q. At least half? A. Certainly.

Q. Do you know what that green label is supposed to represent?

A. Supposed to represent a medium sized egg.

Q. What color label represent a large egg?

A. A blue label.

Q. A small egg? A. Red label.

Q. Red label. During that period of time how many cases of eggs did you see bearing a red label?

A. I couldn't state that.

Q. Did you see any?

A. I have seen them with red labels; yes.

Q. Did you, in the month of April, from the 15th of April to the 15th of May, did you see any cases bearing a red label on the floor of that plant in that period?

A. That I can't remember definitely.

Q. Did you see cases bearing blue labels?

A. I have. [2317]

Q. Which were greater in number, cases bearing blue labels or cases bearing green labels?

A. That I don't remember.

Q. You testified that on occasions that Mr. Berman would point out a stack of eggs to you and direct you to take eggs from that stack, isn't that right? A. That's right.

Q. And he did that in connection with all of these deliveries, is that right?

(Testimony of Oscar Nystrom.)

A. That's right.

Q. There isn't a single delivery where anyone other than Mr. Berman pointed out what eggs you were to take, is that right?

A. Correction there, Mr. Faulkner. Mr. Goddard had instructed me which ones to take in that respect.

Q. Tell me an instance when Mr. Goddard told you which eggs to take.

A. Mr. Goddard has full control of the plant, and Mr. Berman would have the invoice with the butter or eggs, and many times he would send me to Goddard to find out from him which eggs there were that would be ready to go on an invoice, or an order.

Q. Tell me an instance, tell me a transaction between April 15th and May 15th when you went and talked to Mr. Goddard about which particular eggs you were to take on your truck?

A. On most occasions——

Q. What?

A. It is on most all occasions.

Q. Give me the name of a ship to which you delivered eggs that Mr. Goddard pointed out what eggs to take, just one? [2318]

A. Just one?

Q. Yes. A. That is all you want?

Q. What?

A. We could say the Josiah Royce for one.

Q. The Josiah Royce? A. I can say that.

Q. What? A. I can say that.

(Testimony of Oscar Nystrom.)

Q. You can say that?

A. I can definitely say that one.

Q. Is that the only one that you remember definitely?

A. No, I also remember the John Muir.

Q. The John Muir? A. That is right.

Q. Any others?

A. Well, I can't recollect right offhand.

Q. How many cases of eggs did Mr. Goddard suggest that you select for the John Muir?

A. For the John Muir?

Q. Yes. A. That was 48 cases.

Q. And where were the eggs stacked that you selected for the loading of the truck in relation to the John Muir?

A. They were stacked in the plant.

Q. Whereabouts in the plant?

A. How would you want me to explain that?

Q. I just want to know where the eggs were that Mr. Goddard suggested that you load——

A. Are you asking for a specified place or a special section of the building?

Q. Yes. A. And so forth?

Q. Yes. Whereabouts in the building were the eggs that—— [2319]

A. They usually kept the Government stamped eggs in the center of the building toward the rear outside the butter room. And these "P" eggs or these small eggs, whenever they came through, they would always be placed over by Mr. Goddard's office. That is where I have always found them.

(Testimony of Oscar Nystrom.)

Q. That is right near the candling booth?

A. That is near Mr. Goddard's shipping office.

Mr. Hippeli: Q. Had you completed your answer to the prior question, Mr. Nystrom?

A. What question was that?

Q. The one where the eggs were.

Mr. Faulkner: I thought I was asking the witness the questions, your Honor.

Mr. Hippeli: I would like to give him an opportunity to answer.

Mr. Faulkner: Do you want to start redirecting now and I will step aside?

Mr. Hippeli: I believe you interrupted.

Mr. Faulkner: You interrupted him.

The Court: Is there any further answer you want to give to the question?

The Witness: No, there is not.

Mr. Hippeli: Pardon me.

Mr. Faulkner: Q. Then, Mr. Nystrom, there were eggs that were kept in a particular locality near the entrance to the [2320] butter room that had been inspected, is that correct?

A. That is right.

Q. During the period of time between, we will say, the 15th of April and May 15th, how often would you see Department of Agriculture inspectors in that plant?

A. I would see them there quite often.

Q. How often would you see army inspectors in that plant?

(Testimony of Oscar Nystrom.)

A. They were coming in and out all the time. I couldn't say definitely on that.

Q. In connection with the locality in the plant of eggs, I understand your testimony to be that over by Mr. Goddard's office there were eggs which you say had a "P" on the label?

A. A "P", yes, that is right.

Q. Would that, Mr. Nystrom, be a label somewhat similar to the one that I show you now which is numbered here No. 43 for Identification?

A. The light is reflecting on that. I wish to see it more closely.

Q. Pardon me. That is in cellophane.

A. That was the type of label that was always on most of the boxes by Mr. Goddard's office.

Q. You observed there was a letter P?

A. That is right.

Q. Is that right? A. That is right.

Q. And you remember it?

A. I remember that, because it was drawn to my attention. [2321]

Q. What?

A. It was drawn to my attention by another driver.

Q. By what? A. By another driver.

Q. By another driver, but at all events, whether your attention was drawn to it or not, you did see as a man in the plant eggs near Mr. Goddard's office stamped with the letter "P"?

A. That is right.

Q. Did you see at the same time when you saw

(Testimony of Oscar Nystrom.)

eggs stamped with the letter "P" near Mr. Goddard's office other cases of eggs with a Department of Agriculture stamp on them?

A. Near the center of the building, yes.

Q. Right near his office?

A. I never have, no.

Q. And so that between April 15 and May 15 you did not see near Mr. Goddard's office any eggs that had a Department of Agriculture stamp on them, is that right? A. I never noticed.

Q. Were all of the eggs that you saw near Mr. Goddard's office stamped with the letter "P", all of the cases? A. I can't say that definitely.

Q. Did you unload cases of eggs that were coming into that plant during the period of your employment there? A. Did I unload eggs?

Q. Yes. A. That is into the plant.

Q. Into the plant? A. I have.

Q. Did you ever unload any eggs into the plant that had a green label similar to this exhibit?

A. No, I never have. [2322]

Q. You never have? A. No.

Q. At any time?

A. Not that I recall, unless it was a shipment that came back that had been returned from some boat or something like that. I may have returned —I might help unload a truck of the plant with that kind of a label on the case.

Q. A truck from what?

A. From one of the Nye & Nissen trucks that

(Testimony of Oscar Nystrom.)

came in from Petaluma or came back, returns from the waterfront, and so forth.

Q. That is what I want to know. Have you unloaded trucks of eggs that came into that plant from outside sources which had a green label?

A. I have seen some with them.

Q. Have you helped unload them?

A. I have helped unload them.

Q. And did you observe the cases?

A. I have observed the cases, yes.

Q. And they had green labels? A. Yes.

Q. Now, did you unload or help unload in the period of your employment there cases of eggs that came into the Nye & Nissen plant with a green label that had a letter "P" on them?

A. I never have.

Q. You never have? A. Not that I recall.

Q. You do not recall. Now, Mr. Nystrom, during the period from April 15 to May 15 in the plant of Nye & Nissen, tell me about the approximate number of cases of eggs that were over [2323] by the butter room which represented, according to you, eggs that had been inspected by the Department of Agriculture?

A. I can't state that offhand.

Q. Would there be five hundred?

A. I imagine a place doing a business like that, you would have five hundred cases of eggs around.

Q. With the Department of Agriculture stamp on them?

A. They should have. They should.

(Testimony of Oscar Nystrom.)

Q. I am not talking about what they should have. Do you remember seeing five hundred cases of eggs over by the butter room that had a green label——

A. That wasn't my business to know that. I wasn't a bit concerned with that part of the business whatsoever.

Q. I am merely asking you if you remember?

A. No, I don't remember that.

Q. Will you give me your best estimate of the number of cases you referred to a moment ago as eggs that had been inspected by the Department of Agriculture that you saw from day to day? Give me your best estimate of the number of cases.

A. You may see four or five hundred one day there, two or three hundred cases, because they were rather cramped there, I imagine. That is why I say I can't say how many cases. You take a tray of eggs, you only get thirty cases of eggs or so on a tray. Well, if you had them trays all filled up around there, it would take up quite a bit of floor space. So I couldn't [2324] estimate just how many eggs were there or anything else.

Q. In other words, Mr. Nystrom, the ordinary tray would be loaded with thirty cases of eggs, isn't that correct? A. Something like that.

Q. Now then, when a truckload of eggs came into that plant, say of a hundred cases of eggs, they would be unloaded and stacked on a tray, wouldn't they? A. That is right.

Q. And after you stacked them on the tray there

(Testimony of Oscar Nystrom.)

would be ten cases over, wouldn't there, if there were a hundred that came in?

A. That is right.

Q. What would happen to the ten cases? Where would they be put?

A. They all go in the same place. You don't always stack them—they never did always stack them on trays there, Mr. Faulkner.

Q. I understand that where you had a hundred cases come into the plant and you stacked thirty on three trays——

A. Then they would probably hand truck the remaining ten into the cold storage plant.

Q. Mr. Nystrom, would the remaining ten be trucked into the cold storage plant or would the remaining ten be trucked over by Mr. Goddard's office? Yes or no, please?

A. I have never had the occasion to see that happen.

Q. You have never seen the residue of cases hand trucked and stacked over by Mr. Goddard's office that have come directly off a truck that have been unloaded onto trays, is that right? [2325]

A. Not right in front of his office, no.

Q. How far from his office, Mr. Nystrom?

A. I would say a few feet back from his office—say ten or twenty feet, thirty feet, something like that.

Q. How close were these cases that you have referred to that have the letter "P"? How far away from his office?

(Testimony of Oscar Nystrom.)

A. Right up against the wall of his office.

Q. Right up against the wall?

A. That is right.

Q. The hand trucked eggs would be twenty feet away, is that right? A. Yes.

Q. Have you ever taken and hand trucked eggs over to within twenty feet of Mr. Goddard's office?

A. I don't remember.

Q. Between April 15 and the time that you left, or April 1 and the time that you left, how many times have you gone out in your truck with merchandise for a customer where you had to bring it back because you did not load the truck properly? How many times?

A. I don't remember ever doing that.

Q. How many times have you gone out in the period of time that you were employed there with truckloads of butter, where butter in 60-pound cases went to one shipping company and 50-pound cases went to the other, and you gave the 60-pound butter to the 50-pound customer and the 50-pound butter to the 60-pound customer? How many times did that happen?

A. I don't remember that ever happening.

Q. Did you at any time make any mistakes in your deliveries? [2326]

A. I may have made one.

Q. When? A. I don't remember.

Q. In the entire period of your employment you only made one mistake?

A. I honestly believe that.

(Testimony of Oscar Nystrom.)

Q. Isn't it a fact, Mr. Nystrom, that when you would leave that plant day after day Mr. Berman would take the invoices and he would each separate day put them in your hand, when he was the one who did it, explain which went to the shipping company and which were to come back?

A. That is right.

Q. And he did it every day, didn't he?

A. He did that every day.

Q. Every day? A. Every day.

Q. In other words, every day he told you the same thing he had told you the day before, isn't that right? A. That is right.

Q. And there was no variation in what you should do? A. No.

Q. Mr. Nystrom, you have referred to a transaction in April of 1944 in which you have testified that you took 48 cases of eggs to a Norton Lilly pier? A. That is right.

Q. How do you remember the number of cases?

A. How do I remember it?

Q. Yes. How do you remember that?

A. Because it was fresh in my mind at that time. I made a sworn statement to that effect.

Q. Well, it stuck in your mind at all events?

A. It did.

Q. And you made a sworn statement?

A. I did. [2327]

Q. When? A. At about that time.

Q. In connection with that transaction my understanding is that Mr. Berman told you to load

(Testimony of Oscar Nystrom.)

your truck with 38 cases of eggs and he pointed them out, is that right?

A. He took me over to the eggs that he wished me to take.

Q. And it was in the morning, wasn't it?

A. In the morning.

Q. How many trucks were being loaded that morning by Mr. Berman when he took you to point out the eggs? A. There would be three there.

Q. What?

A. There would be two city sales trucks and one doorway. They would be off by themselves and I would be to one side.

Q. How close did he take you to the stack of eggs that you were to put on that truck?

A. He took me right over to them to help me bring them over.

Q. Mr. Nystrom, is it not a fact that the method of loading your truck was substantially this: that Mr. Berman would indicate to you the quantity of eggs to go on an order and he would point out and tell you to get the eggs from that stack over there and while you were loading the truck he would go upstairs into the office and have the invoices, such as Exhibit No. 164, typed up so that he could hand it to you when you left the premises?

A. He never let me touch anything unless he had the orders first.

Q. And the order he had first was his delivery tag, wasn't it? [2328]

(Testimony of Oscar Nystrom.)

A. Yes. I would never touch anything without his say so.

Q. Mr. Nystrom, isn't it a fact that when an order was filled by you that Mr. Berman——

A. Could I describe to you just what would happen?

Q. No, I would just like you to answer the question. Isn't it a fact that when Mr. Berman would give a direction to you to fill an order he would have a hand tag similar——

A. I believe it would be a yellow tag. I know what you are referring to, but that is not the tag.

Q. Just wait for the question. Usually a yellow tag.

A. It is usually a yellow tag, but when he usually gave me his instructions he would have all the papers.

Mr. Hippeli: 61 I believe is one, Mr. Faulkner.

Mr. Faulkner: 60.

Q. Mr. Berman would have filled out a tag similar to that Exhibit 60?

A. Yes, he would.

Q. Isn't that correct? A. That is right.

Q. And that would be in his own handwriting?

A. That is right.

Q. And that would be in two counterparts, wouldn't it?

A. That is right, a carbon copy and a pencilled copy.

Q. And that would be part of the papers that

(Testimony of Oscar Nystrom.)

you would take down when you went to the water-front? A. That is right.

Q. Now, at the time that he would first talk to you that document similar to Exhibit 60 would have been filled out by Mr. Berman, isn't that right? A. That is right. [2329]

Q. Now, after he gave you a direction to fill the order represented by that document it is a fact, is it not, that he would do one of two things: he would go over and load the other trucks or he would go upstairs to get the printed invoice similar to this type of invoice, which is Exhibit 164?

A. You are wrong.

Q. All right. What would he do?

A. He would get the order and he would tell me to wait a minute, and he sent me up there sometimes after the typewritten form. And then I would bring them back and then he would take the papers, lay them on his desk, and then he would look at it and see what it called for. And then he would maybe—happened to grab me by the arm and he would say to me, "Come on over here. We'll want to get 38 cases out of this lot," or ask Mr. Goddard's instructions as to what eggs we could take. And then he would try to get behind the tray or give me a hand to push them over, and after we bring that over, then he would go back to his desk. Then he would look at the order again, and then he would instruct me to come with him to instruct Ruby to get some butter. Goddard would open the ice box, I would go in with him, and he

(Testimony of Oscar Nystrom.)

would instruct me just what to take. We would come out and he would close the ice box, and then we would bring that over to the truck. Then if there was, we will say, some other cheese, and so forth, that is in Mr. Berman's box, he would walk in with me and instruct me just what cheese to take and [2330] would assist me in that. And then he would have me pile that out in front of the truck so he could count it before I put it on.

Q. And would all of that be done that you have just described after these typewritten copies had been prepared? A. That is right.

Q. Isn't it a fact, Mr. Nystrom, that the usual method was that you would go up to the office and get the typewritten invoice yourself from the girls in the office to take with you to the waterfront?

A. He would give me that yellow written order. I would bring that up there, and they would type it up.

Q. And then you would go up on many occasions and get the typewritten invoice, wouldn't you?

A. I would go up there, get them, bring them back, and then we would start filling the order.

Q. You would bring the typewritten invoice back before the order was filled?

A. I would bring them back, hand them to Mr. Berman, and then we would proceed to fill the order.

Q. And it would not be until the typewritten invoice was prepared—— A. That is right.

(Testimony of Oscar Nystrom.)

Q. ——that you would fill the order, is that your testimony? A. That is right.

Q. I mean it is your testimony that the typewritten invoice [2331] similar to Exhibit 164 would be prepared before instructions were given to you in respect to filling the order, is that right?

A. In respect to loading the truck.

Q. I see. So that before any operation was performed by you at all in respect to filling the truck, a handbill similar to Exhibit 60——

A. That is the yellow one?

Q. Yes, and an invoice similar to 164 would be prepared in the office of Nye & Nissen?

A. It would be in Mr. Berman's hands.

Q. During this period of time from the 19th of April until the time you left on the 13th of May, on occasions when you went to the waterfront, did you have in your truck merchandise for local delivery at the same time that you went to the waterfront?

A. I have had occasions of that, yes.

Q. Tell me some occasion when you had merchandise for local delivery in your truck at the same time that you had merchandise for the waterfront?

A. I wouldn't know how to explain that to you, Mr. Faulkner. Would you try to make that a little more clearer to me, how you would like that explained?

Q. You would load that truck in the period from the 19th of April to the 12th of May, the 13th of

(Testimony of Oscar Nystrom.)

May, and in that truck there would be butter, eggs and cheese for some ship on the [2332] waterfront?

A. That is right.

Q. Also in that truck there would be butter, eggs or cheese for someone else, isn't that right?

A. For the stores, yes.

Q. Tell me some occasions when you went to the waterfront with a truckload of butter, eggs and cheese for a shipping company and at the same time had butter, eggs and cheese for some local store? A. I can't remember offhand.

Q. Can you remember any instance where you did not have butter, eggs and cheese, or eggs or butter or cheese for a ship that you did not have in the same truck butter, eggs or cheese for a store?

A. I usually always every morning made a delivery to their two stores, one on Market Street and the other on Mission Street, the first thing in the morning.

Q. So that the usual practice when you were going down to the waterfront to make these deliveries, for your truck to go on the waterfront, that your truck would be loaded with merchandise for the stores, and merchandise for the shipping companies, isn't that correct?

A. Not on all occasions.

Q. No, but it was usually that way, was it not?

A. It wasn't usual. It was unusual, because I would have to take care of two stores, and sometimes the two stores would take quite a bit of room in the truck and I would have to go up right away

(Testimony of Oscar Nystrom.)

in the morning, hurry back, and then make my delivery down at the front. [2333]

Q. You mentioned two stores and I did not get them. What were the names of the stores? Where were they?

A. The Farmyard in the Crystal Palace Market and the Farmyard out at 22nd and Mission Street at the New Mission Market.

Q. And they were part of the customers to whom you delivered, am I correct in that?

A. I understand the two stores belong to the Nye & Nissen Company.

Q. Now, did you deliver to anybody else except those two stores and ships on the waterfront?

A. I have occasionally, yes.

Q. In what localities?

A. Well, I have delivered quite a bit of butter to the Safeway Stores.

Q. And were you delivering butter to the Safeway Stores in April and May of 1944?

A. I cannot state that clearly because it has been so long I can't quite remember.

Q. Your memory is a little better on the subjects that you have talked over with Mr. Magee and Mr. Hippeli and Mr. Johnson, isn't it?

Mr. Pratt: I object to that, if the Court please. It is an improper question—comparison.

The Court: There is no evidence that he did.

Mr. Faulkner: Pardon me?

The Court: There is no evidence that he did. You are assuming a fact not in evidence. [2334]

(Testimony of Oscar Nystrom.)

Mr. Faulkner: Well, it is not a violent presumption though.

Q. You have talked your testimony over with Mr. Hippeli, have you not?

A. I have on occasion, yes.

Q. How many occasions?

A. I would say once or twice. That is about all.

Q. Well, when?

A. When I was subpoenaed.

Q. Have you talked your testimony over with Mr. Magee? A. Excuse me? Who?

Q. Mr. Magee?

A. I have talked to Mr. Magee a number of times and also Mr. Johnson.

Q. And you have talked about your testimony in this case, haven't you?

A. What is that, sir?

Q. You have talked about your testimony in this case? A. That is right.

Q. And you have had documents exhibited to you, have you not? A. That is right.

Q. So that I say your memory is clearer on the subject where you have talked your testimony over with Mr. Magee and Mr. Johnson and Mr. Hippeli than on the normal transactions in that business, isn't that correct?

A. That is correct. An agent could refresh your mind, couldn't they?

Q. Yes, and your mind has been refreshed, has it not?

A. It has been refreshed all along.

(Testimony of Oscar Nystrom.)

The Court: We will now take a recess.

(Recess.) [2335]

The Court: You may proceed.

Mr. Faulkner: Q. Mr. Nystrom, during the delivery—if I do not speak loud enough I am not trying to embarrass you, because I do let my voice drop. During this period of time in the months of April and May, 1944, it is true, is it not, that in addition to merchandise, butter, eggs and cheese which you took to local customers and made deliveries to the waterfront, you would on many occasions have more than one delivery at the waterfront; isn't that right?

A. They would be very small deliveries, if there were, consisting of maybe one or two cases of eggs, maybe one case of butter.

Q. On how many occasions in the period from the 19th of April to the 13th of May did you go down to the waterfront with merchandise for two ships? A. Gee, I can't remember.

Q. Do you remember whether on the occasion that you went to the Czechoslovakian Victory you took any merchandise for any other ship?

A. That I don't remember.

Q. Do you remember when you went to deliver merchandise to the Cape Pillar, whether you had any other merchandise for any other ship?

A. No, I don't.

Q. Or the Mission San Diego?

A. I believe the Mission San Diego, I did have.

Q. The Cape Pillar?

(Testimony of Oscar Nystrom.)

A. That I don't remember.

Q. Do you remember in respect to the Henry White? A. I don't remember. [2336]

Q. The Gilbert Hitchcock?

A. I don't remember.

Q. The Francis Parker?

A. I don't remember.

Q. The Cape Charles?

A. I don't remember.

Q. The Josiah Royce?

A. I don't remember. That, I remember, I didn't have.

Q. On which occasion, the first or the second?

A. The Josiah Royce, that was the only delivery I had on the trip.

Q. The William Coulter?

A. I don't remember.

Q. Now, Mr. Nystrom, what ship did you deliver to first of all of these shipments that you have referred to on your direct examination, do you remember? A. The John Muir.

Q. The what? A. The John Muir.

Q. That was an occasion involving what products, do you remember?

A. That involved eggs. I did not understand that question.

Q. What products did you take down to the John Muir, do you remember?

A. I took some eggs down there.

Q. Anything else?

A. I don't remember exactly.

(Testimony of Oscar Nystrom.)

Q. In respect to the John Muir, was that truck loaded in the morning in connection with that delivery? A. The John Muir?

Q. Yes. A. That's right.

Q. It was loaded in the morning?

A. No, it was delivered in the morning.

Q. Well, when was it loaded?

A. It was loaded in the evening.

Q. The preceding evening? A. Yes.

Q. Is that right? Were all of the documents handed to you on [2337] the preceding evening?

A. No, they were handed to me in the morning.

Q. Who participated in——

A. I am confused on this here boat.

Q. What?

A. Mr. Faulkner, I am confused on this boat here.

Q. You are confused?

A. I am confused, yes.

Q. Were you confused on your direct examination about it? A. That's right.

Q. You were.

A. First we started off, you wanted to know what boat, what ship we first came in contact with.

Q. Yes, and you mentioned when Mr. Hippeli had you on the stand——

A. That was the John Muir.

Q. I thought you said you were confused.

A. Well, then, as we proceeded along I was getting a little jumbled up.

Q. All right.

(Testimony of Oscar Nystrom.)

Mr. Hippeli: I think he means he didn't follow your question, Mr. Faulkner.

Mr. Faulkner: Now, just——

Q. Now, Mr. Nystrom, in connection with the John Muir, I understood you to say that your truck was loaded the night before you made the delivery; am I correct?

A. I am not sure. That is why I wanted you to go back.

Q. What is your best recollection; that is all that I want. What is your best recollection?

A. Gee, I am sorry to say that is the best I can say. [2338]

Q. At all events, your best recollection now is that you went to the John Muir and you delivered the merchandise referred to. A. That's right.

Q. Do you remember the number of cases?

A. I remember the number of cases.

Q. How many? A. There were 48.

Q. What? A. 48 cases.

Q. Do you remember the 48 cases, or is that a figure that has been shown to you on these documents which you assume were accurate?

A. Well, I made a note at the time. I made a sworn statement to that effect.

Q. All right. Is that what you based it on?

A. That is what I based it on.

Q. Have you a memory, as you sit there now as a witness, apart from any statement you made, have you a memory of this amount at all?

A. I have.

(Testimony of Oscar Nystrom.)

Q. Now, in all of these transactions, Mr. Nystrom, whenever eggs were involved you said Mr. Berman selected them, and when butter was involved you said Mr. Goddard selected it. That was the usual procedure in the plant, wasn't it?

A. That's right.

Q. Isn't your testimony based upon the usual procedure in the plant? A. That's right.

Q. All right. Now, in respect to the John Muir, do you remember anything in regard to any cheese on that vessel? A. No, I did not. [2339]

Q. Or anything in regard to butter?

A. No, I did not.

Q. Isn't it a fact, Mr. Nystrom, that during this period of time the method followed in that plant was that Mr. Goddard would place a large quantity of butter out of the butter room on the floor of the plant for delivery—withdraw that. Isn't it a fact the method followed was that Mr. Goddard would come down early in the morning and place large quantities of butter on the floor of the plant, and that when a delivery of butter was required it would already be on the floor?

A. Not in my case, Mr. Faulkner.

Q. In the period from April 15th to May 15th wasn't that the general practice in that plant?

A. The general practice in that respect, Mr. Faulkner, was that the city sales drivers would have contact with that butter, but on all occasions when I concerned myself with waterfront deliveries I would always have to see Mr. Goddard and we

(Testimony of Oscar Nystrom.)

would go to the icebox and go through the general procedure I gave you.

Q. Who had the key to the icebox?

A. Mr. Goddard.

Q. Did Mr. Berman?

A. Mr. Berman had the key to his own icebox.

Q. To his own? A. His own icebox.

Q. There were two freezers? A. Yes.

Q. The freezer or icebox that Mr. Goddard had the key to was a very large——

A. A very large box.

Q. A large place wasn't it?

A. A good size box. [2340]

Q. How would it compare to this room?

A. Well, I would say it was pretty close to this, the size of this room.

Q. The one that Mr. Berman had access to was not that large, was it?

A. It was a very small box.

Q. About how large would that be?

A. I would say about 14x14 or 16x16, something like that.

Q. On the occasion that you went down to the John Muir—that was over at the Outer Harbor?

A. That's right.

Q. Do you remember that?

A. Yes, the Naval Supply Depot.

Q. Regardless of the day, at the time you went to the John Muir had you talked to any Government agent? A. At the time I went there?

Q. Yes.

(Testimony of Oscar Nystrom.)

A. I had talked with Government agents.

Q. At that time, is that correct? A. Yes.

Q. So it is a fact, is it not, Mr. Nystrom, that every transaction that you remember concerning the delivery of merchandise is a transaction that occurred after you talked to a Government agent?

A. Put a little more emphasis in that to the question again, Mr. Faulkner.

Q. The John Muir is the first delivery that you remember the name of the ship.

A. That's right.

Q. That delivery occurred after you talked to a Government agent, is that right?

A. That's right.

Q. So that every transaction that you testified to on your direct examination was a transaction or a delivery made by you [2341] after you talked to a Government agent; isn't that true?

A. I made the delivery—I used to go——

Mr. Faulkner: Mr. Gagan, will you try your efforts and see if he can understand the question?

(Question read by the reporter.)

The Witness: I believe you are wrong there. These deliveries were made first.

Mr. Faulkner: Q. I just asked you if it is not a fact that when you made the delivery to the John Muir that you had before that date talked to a Government agent. A. I had.

Q. Yes. How long before?

A. I don't remember exactly.

Q. Was it a week before?

(Testimony of Oscar Nystrom.)

A. Presumably, a week or two before.

Q. Now, on the occasion that you delivered merchandise to the John Muir, there is no question, is there, Mr. Nystrom, and regardless of any direction which you say occurred in that plant, that you put that merchandise in that truck?

A. I put that merchandise in, I said yes.

Q. You put it into the truck after you had already talked to a Government agent?

A. That's right.

Q. All right. It is further true that every bit of merchandise that you loaded onto the truck that you identified on your direct examination was loaded into the truck by you after you were in contact with Government agents?

A. That's right.

Q. When you went to the John Muir, did any Government agent join you after you left the plant of Nye & Nissen? A. No, they did not. [2342]

Q. At any time on that day did you get in touch with a Government agent? A. I did.

Q. On each occasion that you made a delivery to a ship which you named on your direct examination did you get in touch with a Government agent? A. I had done that, yes.

Q. Did you on each occasion do that?

A. Not all occasions, no.

Q. Which Government agents did you get in touch with?

A. Mr. Magee or Mr. Johnson.

Q. Did they request you to do that?

A. They said they would like to know, yes.

(Testimony of Oscar Nystrom.)

Q. When you left the plant, is that right?

A. Yes, that's right.

Q. Where would you go from the plant to get in touch with those men?

A. I would go directly to the pier.

Q. And is that where you would phone?

A. That's right.

Q. Would you phone before the truck was unloaded, or after? A. After it was unloaded.

Q. Was that your uniform practice?

A. It was not all the time; a lot of times they would be there when the truck was ready to be unloaded.

Q. On the occasion that they were there when the truck was ready to be unloaded, had you telephoned them before that?

A. There would be occasions when they were there when I never phoned them.

Q. Were there occasions when you phoned them before you got to [2343] the pier?

A. There were occasions that I phoned before they got there?

Q. Yes. A. That's right.

Q. They were, were they not?

A. That's right.

Q. Do you remember when you got down to the pier to deliver merchandise to the John Muir whether any agents were there?

A. That I don't remember.

Q. When you loaded your truck for the John Muir you put on that truck, according to your testi-

(Testimony of Oscar Nystrom.)

mony, 38 cases of eggs and you say they bore a Department of Agriculture stamp?

A. That's right.

Q. Did you examine each case?

A. In that respect, Mr. Faulkner, when Mr. Berman walked over with me to indicate to me which eggs to take he put his hand on the tray and indicated definitely the Department of Agriculture stamped eggs to take.

Q. Mr. Nystrom, how many cases are on a tray of eggs? A. Approximately 30.

Q. It is seldom that there are more than 30 cases, is that right? A. Very seldom.

Q. On the occasion when you loaded for the John Muir, I will ask you again if you, yourself, examined every case and saw 38 Department of Agriculture stamps on 38 cases?

A. I definitely did that.

Q. You did that. Did you examine both ends of the cases?

A. No. I will tell you how I happend to know that, Mr. Faulkner.

Q. No. I just want to know if you did it. You remember distinctly [2344] noting the 38 cases?

A. I remember distinctly for this reason, that when I put them on the truck it was so the Department of Agriculture stamp would face out, so when anybody looked at the truck they would see it.

Q. So while you were driving along the streets anyone who looked in would see it, is that right?

A. No. The idea was when I opened the doors,

(Testimony of Oscar Nystrom.)

when I get on the dock the minute they looked in if they will see all these stamps staring them in the face.

Q. That is how you remember?

A. That is how I remember.

Q. On that occasion how many trays of eggs did you break down to get the 38 cases?

A. You mean on the John Muir?

Q. On the John Muir.

A. On that occasion there I brought the tray up and got the other ten from Mr. Goddard, he indicated to me from an individual stack and I took a hand truck with clamps on the side and took over the other eight.

Q. What?

A. Took over the other eight cases to fill out the order.

Q. In other words, you took a tray of 30 cases and then you took a hand truck and took eight cases?

A. Yes.

Q. Did you break a tray of 30 cases down to take the eight off?

A. No, I didn't. They were stacked in four-high tiers.

Q. Where? A. Inside the plant.

Q. Well, where were they in respect to the tray with 30 cases?

A. They were on the side of the building near the wall. [2345]

Q. That was over by Mr. Goddard's office?

A. No, that is——

(Testimony of Oscar Nystrom.)

Q. I understood you to say you took the eggs——

A. Could I give you an explanation on that? Say like the jury box here would be Mr. Goddard's office. Say the cases that we are talking about—over here is Mr. Goddard's office, and the "P" eggs would probably be right in here.

Q. I don't want to——

A. These here eggs are at the tray, that would be an odd lot. They would be Government inspected. They would be standing in tiers alongside the wall outside his office. These eggs would be in a tray alongside that building over there. I should say the butter room was there, and the eggs stamped by the Government, also butter, right in front of the cutting room, or the butter room.

Q. So that in order to load that truck you went to three different localities in the premises of Nye & Nissen to get the eggs? A. That's right.

Q. Do you remember that distinctly in respect to the John Muir? A. That's right.

Q. Was there any suggestion at that time made to you by any Government agent that it would be desirable for you to bring cases down there that had a label on that didn't have a Department of Agriculture stamp on? A. No.

Q. Was the subject of bringing down cases without stamps discussed with you and Mr. Magee, or Mr. Johnson?

A. That has been on occasions. [2346]

Q. In other words, some things that you were taking down to those piers, eggs from the plant of Nye & Nissen, you had already discussed with Mr.

(Testimony of Oscar Nystrom.)

Magee and Mr. Johnson the matter of cases that did or did not have a Department of Agriculture stamp, isn't that true? A. That's right.

Q. Now, Mr. Nystrom, you went down to a ship called the Josiah Royce? A. That's right.

Q Do you remember that?

A. Yes, I remember that.

Q. Do you remember the number of cases involved? A. Yes, I do.

Q. Do you remember the quantity of cheese involved? A. No, I don't.

Q. Do you remember the quantity of butter involved?

A. No. I don't believe there is any butter or cheese on that order at that time.

Q. What?

A. I don't believe there is any butter or cheese on that order at that time.

Q. Your best recollection is you don't remember any butter and cheese in the Josiah Royce transaction, is that right? A. Not right now, no.

Q. In respect to eggs, I understand, Mr. Nystrom, that you took 60 cases of eggs out of the plant of Nye & Nissen. A. That's right.

Q. Of those 60 cases 50 cases had come from one part of the plant of Nye & Nissen and 10 cases from another? A. That's right.

Q. Is that correct?

A. That was correct, sir. [2347]

Q. You loaded them into the trucks?

A. That's right.

(Testimony of Oscar Nystrom.)

Q. Then you got down to the pier and a receiving clerk——

A. Steward—excuse me, Mr. Faulkner.

Q. A steward? A. A steward of the boat.

Q. Pointed out to you that some of the cases did not have a Department of Agriculture stamp?

A. That's right.

Q. You knew that before he did; didn't you?

A. Yes, I did.

Q. Those 10 cases then were lined up, is that right?

A. Yes. He watched me as I unloaded and he watched the cases come off, because he said he had trouble before in that respect of not having a Government stamped eggs delivered to him, so he watched. He stood by the end of the truck and watched me taking them off, and the minute I came to one of them with a "P" on it, he said, "Put that case over here."

Q. You then stacked up the 10 cases in a separate pile? A. He had me do that.

Q. He then opened the tops of the 10 cases?

A. That's right.

Q. And he looked at the eggs? A. Yes.

Q. And you looked at the eggs? A. Yes.

Q. And the eggs were about the size of your ring?

A. A little larger; give them credit for being a little larger than my ring.

Q. After that was done you left that pier, did you not? A. That's right.

(Testimony of Oscar Nystrom.)

Q. Did you on that occasion see Mr. Magee or Mr. Johnson [2348] when you were down on the pier on the first occasion? A. No, I did not.

Q. When you got back to the plant of Nye & Nissen on that afternoon did you make any other deliveries? A. No, I did not.

Q. Did you go directly from the pier to the plant of Nye & Nissen? A. I did.

Q. How long did it take you to get there?

A. I got tied up over there at the time with other ships' stores coming in, and so forth, and two or three other trucks there; I can't remember exactly.

Q. I mean approximately.

A. Approximately, well, I imagine it would take me about three-quarters of an hour to get back there.

Q. You were over in Oakland? A. Yes.

Q. I mean the Outer Harbor?

A. Yes; Outer Harbor. It would take me about half or three-quarters of an hour.

Q. When you got there Mr. Berman started to talk to you, is that right?

A. He didn't say anything to me for quite a while. He stared at me.

Q. Didn't you tell us on your direct examination that as soon as you got in there Mr. Berman said, "What happened?" A. That's right.

Q. Then he did start to talk to you?

A. Yes, he really did talk to me. [2349]

(Testimony of Oscar Nystrom.)

Q. Then you were sent back to the Outer Harbor with some other eggs, is that right?

A. That is right.

Q. And how many cases of eggs did you take?

A. Sixty cases.

Q. Did you take sixty cases or did you take ten cases? A. I took sixty.

Q. What type of eggs were they?

A. They were the large Grade AA.

Q. So that when you went back to that place you went back with *six* large AA cases of eggs?

A. That is what I understood them to be, yes.

Q. What?

A. I understood them to be that.

Q. Well, did they have a label on?

A. Yes, and they had the Department of Agriculture stamp on them also.

Q. Did you examine them?

A. I noticed the cases, yes.

Q. Did you examine each one of the sixty cases as you loaded it on the truck or as it was on the floor of the plant?

A. Well, I was instructed by Mr. Berman at that time to see Mr. Goddard and be sure to get sixty cases of Grade AA eggs, large Grade AA eggs.

Q. I am not talking about Grade AA eggs. I am talking about a Department of Agriculture stamp. Did you see that stamp on them?

A. He said to make sure they were all that.

Q. Did you then examine every case?

A. Practically every case, yes.

(Testimony of Oscar Nystrom.)

Q. How many did you miss?

A. I don't think I missed any [2350]

Q. What time of day was this transaction?

A. Excuse me, but I couldn't miss any of them because Mr. Berman was there at all times.

Q. Well, he has no control over your eyesight, has he? A. What is that, sir?

Q. Mr. Berman has not control over your sight, has he?

A. He evidently don't have much trust in his help either.

Q. What time of day was it when you started back to the Outer Harbor with sixty cases of large eggs?

A. I would say it was right after lunch.

Q. And when you got over there did you deliver those cases of eggs to somebody?

A. When I got to the Outer Harbor?

Q. Yes.

A. When I came there the other fifty cases were already on the boat.

Q. Did you see them on the boat?

A. No, but I know they were not on the dock. They told me they were already taken aboard.

Q. How many cases were on the dock?

A. Ten cases.

Q. How many cases did you leave on the dock?

A. I left ten.

Q. How many cases did you bring back?

A. I brought fifty cases that I had taken over and ten that were left on the dock there.

(Testimony of Oscar Nystrom.)

Q. Is that right? Fifty? Did you receive any instructions from Mr. Berman of how many cases to bring back from the Josiah Royce when you started on your second trip? [235]

A. Well, I probably—it happened I misunderstood him in respect he told me to go over there and exchange the eggs, and I understood when I took the sixty over there I was to exchange which ever ones they wanted to exchange. That is how I just happened to exchange the ten.

Q. Mr. Nystrom, isn't it a fact that you received instructions from Mr. Berman to go over there and exchange ten cases of eggs?

A. He didn't specify any number.

Q. Isn't it a fact that you received instructions to exchange ten cases of eggs, and when you went over there with sixty cases and came back he said, "What are you trying to do? Give those eggs a ride?" A. That is right.

Q. In other words, the fifty cases went over and back and Mr. Berman said, "What are you trying to do, give those eggs a ride?" Isn't that right?

A. Yes. He said, "I didn't send them eggs out for a ride."

Q. There isn't any question on the second delivery of eggs to the Josiah Royce that you got all mixed up, is there?

A. That I got mixed up?

Q. Yes.

A. No, I don't see where I got mixed up in that respect.

(Testimony of Oscar Nystrom.)

Q. Do you know when the company that ran the Josiah Royce put in an order for large eggs? Yes or no?

A. Do I remember?

Q. Yes?

A. When they put the order in?

Q. Do you remember when the company that ordered eggs for the [2352] Josiah Royce changed the order from medium eggs to large eggs?

A. I know nothing about that because I am just a driver and I just deliver what I am told to deliver.

Q. When you went over there with sixty cases of large eggs did you have a handbill in connection with those cases of eggs?

A. I had a handbill, yes.

Q. What did it say on the handbill?

A. I never took notice.

Q. Did it say ten cases of mediums or sixty cases of large?

A. I believe it said sixty cases of large. We are referring to the second trip over, are we not, Mr. Faulkner?

Q. Yes, the second trip. At all events, the ten cases that were on the pier on your first trip were taken back into your truck?

A. That is right.

Q. And ten cases of large eggs, AA, with the Department of Agriculture stamp, were placed on the pier, is that right? A. That is right.

Q. Did you get a receipt for ten cases of any kind of eggs on that occasion?

(Testimony of Oscar Nystrom.)

A. I don't remember.

Q. Did you see the same man whom you had seen before who had segregated those ten cases when you were down there in the morning?

A. Well, he told me—I seen him, yes.

Q. You saw him on the second occasion?

A. Yes.

Q. The same fellow? A. The same fellow.

Q. Now, were the eggs that you brought back in cases that were nailed up?

A. Some of them had been just—in other [2353] words, they had been open but they just tapped the nails back in. They were not solid tight.

Q. Were they wooden cases or fiber cases?

A. They were wooden cases.

Q. Are you certain they were wooden cases?

A. I can't remember exactly.

Q. When you brought the ten cases back into the plant of Nye & Nissen, you then had fifty cases of large AA eggs and ten cases of eggs either in fiber or wood that you had delivered that morning?

A. That is right.

Q. You did not make the delivery to the Josiah Royce the next day, did you?

A. No, I did not.

Q. You did not go back to the Josiah Royce?

A. The third time? No.

Q. In connection with that transaction, is that right? A. No, I did not.

Q. Did you communicate with Mr. Magee or Mr. Johnson about that transaction on the day you went down there first? A. Yes, I did.

Q. Did you communicate with them in the after-

(Testimony of Oscar Nystrom.)

noon of the day when you went back with the second delivery? A. No, I did not.

Q. Did you communicate with them the next morning? A. I don't remember.

Q. Which of the two men did you talk to, Magee or Johnson?

A. I always talked to either one of them. I can't remember the [2354] exact one.

Q. Did you tell Mr. Magee or Mr. Johnson on or about the 25th of April that the eggs that you took away from the Josiah Royce you took to the John Muir?

A. The eggs I took from the John Muir——

Q. Did you tell those Government agents that the eggs that you took off the Josiah Royce, the ten cases of eggs, were delivered to the John Muir?

A. No, I did not, because the John Muir was delivered before it was delivered to the Josiah Royce.

Q. Isn't it a fact that the John Muir had left before the Royce was loaded?

A. That I wouldn't know.

Q. Isn't it a fact that you delivered the eggs to the John Muir before you delivered them to the Josiah Royce?

A. I did deliver to the John Muir before I delivered to the Josiah Royce.

Q. Did you discuss with Mr. Magee or Mr. Johnson the matter of what ship the ten cases of eggs that were on the wharf, which were part of the first

(Testimony of Oscar Nystrom.)

load—did you discuss those cases of eggs with any Government agent?

A. I did not. I just told them what boat I was delivering to.

Mr. Faulkner: At this time, your Honor, as part of the examination of the witness, I wish to hand to the Jury an exhibit which has not been exhibited to them and direct their attention that this exhibit states on it eggs taken—— [2355]

The Court: What exhibit it is?

Mr. Faulkner: Exhibit No. 66. I had better ask the witness another question, your Honor.

Q. Did you take any eggs off of the John Muir and place them on the Josiah Royce?

A. No, I did not.

Mr. Faulkner: I would like the Jury to see Exhibit 66 and call their attention to a notation made on it: "Eggs taken from U. S. John Muir and placed on the Josiah Royce," on the upper right-hand corner of Government's Exhibit 66.

Mr. Hippeli: I would like to point out to the Jury that that is not in the witness' handwriting.

Mr. Faulkner: That is in the handwriting of Colonel Hand.

(U. S. Exhibit 66 was thereupon passed among the Jury.)

Mr. Faulkner: May I have the exhibit from the Jury?

The Court: Now you may indicate for the purpose of the record what the Jury was looking at.

Mr. Faulkner: The exhibit is a form of the

(Testimony of Oscar Nystrom.)

Veterinary Corps inspection of eggs. It is specified to be in the handwriting of Colonel Hand. The particular part of it contained thereon to which I directed attention is in pencil and says, "Eggs taken from SS John Muir and placed on Josiah Royce." There may be a date on it, your Honor, but I do not see it. But it is U. S. Exhibit 66. The reverse side has no writing.

Q. Now, Mr. Nystrom, you referred in your examination to a [2356] series of other ships. Do you remember taking any eggs to a ship called the Cape Charles?

A. The Cape Charles? I remember making a delivery to that boat.

Q. The Cape Charles?

A. I remember making a delivery to that boat.

Q. Do you remember what was contained in the delivery?

A. I know it was at the end of the month of April, about the 29th.

Q. That was the date. Do you remember what was contained in the delivery?

A. What was contained in it?

Q. Yes.

A. I don't remember exactly, no.

Q. Do you remember whether there were any eggs?

A. There were some eggs, and I believe there was some butter and cheese also.

Q. That there was what?

A. That there was some butter and cheese also. I am not sure about the butter.

(Testimony of Oscar Nystrom.)

Q. Do you remember any transaction with respect to the cheese? A. No, I don't.

Q. If there was any?

A. I don't remember.

Q. On that ship? A. No.

Q. Do you remember who pointed it out to you?

A. Yes, I do.

Q. Well, Mr. Nystrom, if you do not remember there was any cheese there, how——

A. I said there was cheese with that delivery—I said that—but I wasn't sure on the butter. [2357]

Q. You remember who pointed the cheese out to you? A. That is right.

Q. Who was it? A. Mr. Goddard.

Q. Where was the cheese?

A. That is kept on one side of his office.

Q. Near his office?

A. He had some of that cheese stacked over by his office, at that time.

Q. What type of cheecs was involved?

A. I believe it was the wheels of cheese, the Cheddar.

Q. How do they come packed, Mr. Nystrom?

A. They come packed in cartons and wooden cases.

Q. Cartons and in cases?

A. That is right.

Q. Have you ever examined those cases?

A. I have looked at them, yes.

Q. Do they have figures on them representing weights? A. They have.

(Testimony of Oscar Nystrom.)

Q. How many?

A. How do you mean, how many?

Q. Take an ordinary case the cheese was being packed in in 1944, whether it was wood or fiber.

A. They had both types.

Q. They use both types?

A. Both types.

Q. Whether they were using wood or fiber, there would be a figure stencilled on there?

A. That is right, Cheddar, signifying the kind of cheese it was, and then it had stamped on it the date.

Q. The what? The weight?

A. Not the date, the weight. [2358]

Q. How many numbers would you see on a normal case of cheese relating to weight?

A. Two numbers.

Q. That would be like 75 or 78?

A. Like that.

Q. How many figures like that would you find on a normal case of cheese, whether fiber or wood, in 1944? A. Just the two numerals.

Q. In other words——

A. It would either be 76 or 36 or 46 or 99 or 98, whatever it was.

Q. But there would only be one figure representing weight on those cases, is that right?

A. That is right.

Q. Somewhere in your testimony you related a transaction where you were present when a number

(Testimony of Oscar Nystrom.)

was effaced from a case that contained cheese. Do you remember that?

A. That is right. I remember that.

Q. Did you examine that case?

A. I seen the wooden scraper they used.

Q. What? A. It was a wooden case.

Q. Did you see the case?

A. I seen the case because I took that case after they got finished with it and put it on my truck for the delivery.

Q. Did you deliver the case?

A. Yes, I did.

Q. Now, on that case, Mr. Nystrom, a figure was eliminated, isn't that right?

A. That is right.

Q. What was the figure?

A. The numeral. [2359]

Q. What was the numeral?

A. I don't know exactly.

Q. Was it five? A. I wouldn't know.

Q. Was it seventy-five?

A. Because they got the cheese at that time and scraped them off.

Q. And scraped a weight off, is that right?

A. That is right.

Q. And when you say "They", you mean Mr. Berman and Mr. Robinson?

A. That is right.

Q. Who did the scraping?

A. Both of them.

(Testimony of Oscar Nystrom.)

Q. Well, the numbers are about an inch high, aren't they?

A. Somebody has to hold the case. You can't take a narrow case like that, grab hold of it, and scrape a number off.

Q. What size case was involved in this instance?

A. The case would be an awkward case to handle. It would be about, say, so long (indicating).

Q. Two feet long?

A. I would say close to three feet long, and approximately a foot wide.

Q. It is a fact, is it not, Mr. Nystrom, that in 1944 there were in the plant of Nye & Nissen a large quantity of second-hand wooden egg boxes; is it not? A. That I wouldn't know.

Q. It is a fact, is it not, Mr. Nystrom, that there were large quantities of fiber cases that were second-hand used for the packaging of eggs?

A. That is right. I have seen them.

Q. It is a further fact, is it not, Mr. Nystrom, that cheese was packed in second-hand cases in 1944 in many, many instances?

A. I have never seen that Cheddar loaf cheese in second-hand [2360] boxes.

The Court: It is time for adjournment. The jurors may be excused. Keep in mind the admonition of the Court; ten o'clock tomorrow morning.

(Thereupon an adjournment was taken until Thursday, March 7, 1946, at 10:00 o'clock a.m.)

Thursday, March 7, 1946, 10:00 o'clock a.m.

The Clerk: United States v. Nye & Nissen.

The Court: Waive the roll call. Stipulated all the jurors are in the box.

OSCAR NYSTROM,

recalled.

Cross Examination (Resumed)

Mr. Faulkner: Q. Mr. Nystrom, about the 24th of April, 1944, when you were in and out of that plant of Nye & Nissen, about how many cases of eggs did you see placed at that point which you designated in your testimony yesterday as being near the office of Mr. Goddard?

A. I didn't get that question clearly, Mr. Faulkner.

Q. You told us, Mr. Nystrom, that Mr. Goddard had an office on the floor of the plant.

A. That is right.

Q. And that there were cases of eggs stacked against his office, against the wall.

A. That is right.

Q. About how many cases of eggs were there about the 24th of April, do you remember?

A. I should judge around 20 or 30 cases.

Q. Around 20 or 30?

A. That is right.

Q. From time to time after that did you have occasion to add any cases to those by putting other cases over there?

(Testimony of Oscar Nystrom.)

A. I had no occasion to do that. That was taken care of by—— [2361]

Q. Pardon me?

A. That was taken care of by the plant workers, those in the candling room and those who worked inside.

Q. You mean people unloading cases, is that right?

A. People who have anything to do with the eggs inside pertaining to candling, and so forth.

Q. Did you ever see anyone there take any of the cases from any point in the plant of Nye & Nissen and place them over by the office of Mr. Goddard?

A. I never had the occasion of seeing that.

Q. You did not? A. No.

Q. So how the cases you say were there on the 24th of April got there, you do not know, personally, is that right? A. That is right.

Q. About how many cases were there by the office of Mr. Goddard when you left on the 13th of May?

A. I never had occasion to notice that.

Q. What was the largest amount of cases that you saw there at any time between the 24th of April and the 13th of May?

A. Giving a rough figure, I would say 30 or 40.

Q. And when was that that you saw the maximum number of cases?

A. Well, I would say it was between that time when I had any contact with that section of the building.